1	BEFORE THE FEDERAL ELECTION COMMISSION	
2 3	In the Matter of	SECRETARE.
4 5 6	MUR 5455 UNKNOWN IN SOUTH DAKOTA	CASE CLOSURE UNDER THE ENFORCEMENT PRIORITY SYSTEM
7 8 9 10		SENSITIVE
12 13	GENERAL CO	UNSEL'S REPORT
14	The Office of General Counsel has scored MUR 5455 as a low-rated matter. Under	
15	the Enforcement Priority System, matters that are low-rated	
16		are forwarded
17	to the Commission with a recommendation for dismissal. The Commission has determined	
18	that pursuing low-rated matters compared to other higher rated matters on the Enforcement	
19	docket warrants the exercise of its prosecutorial discretion to dismiss these cases.	
20	The facts giving rise to this complaint involve pre-recorded calls allegedly made on	
21	May 25 and 26, 2004, which were critical of then Congressional candidate Larry Diedrich's	
22	record as a state senator in South Dakota. Although the calls began with the message "hello,	
23	this is Marilyn Stamp," there was no disclaimer associated with the calls and, therefore, no	
24	respondent was notified. Furthermore, this Office could not locate a Marilyn Stamp in South	
25	Dakota.	
26	This maner	similar MURs that
27	were under investigation, which involved unknown persons who made automated "push poll"	
28	telephone calls without disclaimers to individuals residing in a number of Congressional	
29	districts across the country (see MURs 5584 (Anonymous Phone Calis), 5585 (ITC	

5

6

7 .

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

Case Closure Under EPS – MUR 5455 General Counsel's Report Page 2 of 3

1 Research) and 5601 (Voter Research Group)). This Office concluded after its investigation

2 of the "push poll" MURs that it was not uncommon for telephone carriers to fail to capture

3 the last four digits of the outgoing caller in their records. Thus, without the last four digits of

4 the phone number where the calls emanated from it was unlikely that an investigation would

ultimately reveal the source of the calls. This Office contacted the complainant in this matter

on several occasions and inquired as to whether there was any additional contact information

available on the caller(s) or unknown respondent(s). The complainant informed this Office

that he was unable to provide any additional information.²

Accordingly, in reviewing the results achieved in the "push poll" investigations, we believe that there appears to be little likelihood of locating the responsible party or parties in this case, and pursuing this matter would require the Commission to expend staff time and resources without the prospect of yielding any useful information. Therefore, in furtherance of the Commission's priorities and resources relative to other matters pending on the Enforcement docket, the Office of General Counsel believes that the Commission should exercise its prosecutorial discretion and dismiss the matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

RECOMMENDATION

The Office of General Counsel recommends that the Commission dismiss

MUR 5455, close the file effective two weeks from the date of the Commission vote, and
approve the appropriate letters. Closing the case as of this date will allow CELA and
General Law and Advice the necessary time to prepare the closing letters and the case file for the public record.

23

² The complainant noted that he was continuing to search for any phone contact information as late as August 2006, but to date has not returned any further inquiries made by this Office.

10/18/06

1

2

8 9 10

11 12

7

13 14 15

16 17

18 19

20

ŀΩ

prof

<∦

(O (O (S) 21

22 23

Attachment:

Narrative in MUR 5455

James A. Kahl Deputy General Counsel

BY:

Gregory R. Baker Special Counsel Complaints Examination

& Legal Administration

Jeff S. Jordan

Supervisory Attorney
Complaints Examination
& Legal Administration

3
 4 MUR 5455
 5
 6 Complainant:

1 2

7

8 9

12

13

14 15

16

17 18

19

20

21

22

23

24

25

Randy Frederick,

Chairman of the South Dakota Republican Party

Respondents: Unknown

1011 Allegations: Complainant alle

Allegations: Complainant alleges that certain persons or parties were responsible for pre-recorded calls to voters throughout the state of South Dakota on May 25 and 26, 2004. The pre-recorded calls allegedly targeted then Congressional candidate Larry Diedrich and his record as a state senator in South Dakota. There was no disclaimer attached to the message nor could the complainant indicate who the responsible party or parties were

General Counsel's Note: This matter

similar MURs that were under investigation, which involved unknown persons who made automated "push poll" telephone calls without disclaimers to individuals residing in a number of Congressional districts across the country (see MURs 5584 (Anonymous Phone Calls), 5585 (ITC Research) and 5601 (Voter Research Group)).

Date complaint filed: May 28, 2004